

#15

New No.

ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

ROBERT W. ALVORD*
CHARLES T. KAPPLER
JOHN H. DOYLE*
RICHARD N. BAGENSTOS
JAMES C. MARTIN, JR.*

*ALSO ADMITTED IN NEW YORK
*ALSO ADMITTED IN MARYLAND

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WASHINGTON, D.C.

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RECORDATION NO **16671** FILED 1428

DEC 26 1989 - 12 30 PM

December 26, 1989

INTERSTATE COMMERCE COMMISSION

Ms. Noreta R. McGee
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

9-300A023

Dear Ms. McGee:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303 are duplicate original copies of a Temporary Use Agreement dated as of December 20, 1989, a primary document as defined in the Commission's Rules for the Recordation of Documents, 49 C.F.R. Section 1177.

The names and addresses of the parties to the enclosed document are:

Vendor: Bethlehem Steel Corporation
Freight Car Division
Johnstown, Pennsylvania 15907

Railroad: Wisconsin Central Ltd.
6250 North River Road
Rosemont, IL 60018

A description of the railroad equipment covered by the enclosed document is:

Two hundred fifty (250) new 3000 cubic foot, 2 compartment covered hopper cars bearing WC 84000 through WC 84249, both inclusive.

Also enclosed is a check in the amount of \$15 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Counterparts - CT. Kappler

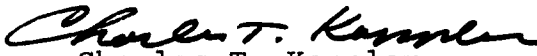
Ms. Noreta R. McGee
Secretary
Interstate Commerce Commission
December 26, 1989
Page Two

Kindly return a stamped copy of the enclosed document to
Charles T. Kappler, Esq., Alvord and Alvord, 918 Sixteenth
Street, N.W., Washington, D.C. 20006.

A short summary of the enclosed document to appear in
the Commission's Index is:

Temporary Use Agreement dated as of December 20,
1989 between Bethlehem Steel Corporation, Vendor,
and Wisconsin Central Ltd. covering 250 covered hopper
cars bearing WC 84000 - WC 84249.

Very truly yours,


Charles T. Kappler

Enclosures

RECORDATION NO 16671 FILED 1425
DEC 26 1989 -12 30 PM
INTERSTATE COMMERCE COMMISSION

TEMPORARY USE AGREEMENT

Dated as of December 20, 1989

between

BETHLEHEM STEEL CORPORATION

and

WISCONSIN CENTRAL LTD.

Interstate Commerce Commission

Washington, D.C. 20423

12/26/89

OFFICE OF THE SECRETARY

Charles T. Kappler
Alvord And Alvord
200 World Center Building
918 Sixteenth Street, N. W.
Washington, D. C. 20006-2973

Dear **Sirs:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/26/89 at 12:30PM' and assigned recordation number(s). 16671 and 4315-C

Sincerely yours,



Noreta R. McGee
Secretary

Enclosure(s)

Executed in six Counterparts of
which this is Counterpart No. /

THIS AGREEMENT, dated as of December 20, 1989, by and between BETHLEHEM STEEL CORPORATION, a Delaware corporation (the "Vendor") and WISCONSIN CENTRAL LTD., a Illinois corporation (the "Railroad")

W I T N E S S E T H:

THAT

WHEREAS, Railroad desires to acquire 250 new 3000 cubic foot, 2 compartment covered hopper cars, to bear Railroad's road numbers WC 84000 through 84249, both inclusive, such cars being hereinafter collectively called the "Units"; and

WHEREAS, Railroad and Vendor have contracted for the purchase and sale of the Units pursuant to the Vendor's specification X-300-975, dated January 26, 1989, arrangement drawing AX-300-975, dated January 24, 1989, and letters to the Railroad dated March 24, 1989, August 15, 1989, November 10, 1989, and December 21, 1989, and pursuant to the Railroad's letters to the Vendor dated May 30, 1989, and August 29, 1989 (collectively, the "Purchase Order"); and

WHEREAS, the Vendor is to deliver the Units to Railroad at Johnstown, Pennsylvania; and

WHEREAS, inasmuch as Railroad has not yet consummated financing arrangements for the acquisition of the Units and therefore, in the absence of this agreement is not in a position to accept delivery of the Units at this time; and

WHEREAS, Railroad anticipates that the above-mentioned financing arrangements (the "Financing") will be consummated on or before February 15, 1990, and Railroad, in order that it may take possession of and use the Units pending completion of such Financing has requested Vendor to grant Railroad temporary possession of and the right to use the Units pursuant to the terms of this Agreement; and

WHEREAS, Vendor is willing to grant such right to use the Units upon the terms and conditions hereinafter stated.

NOW, THEREFORE, in consideration of the premises and of the promises of the parties herein contained, the parties agree as follows:

1. Vendor hereby agrees to deliver physical possession of the Units to the Railroad at Vendor's place of business in Johnstown, Pennsylvania. The rights of Railroad hereunder in respect of each Unit shall commence on the date of acceptance of such Unit from the Vendor (the "Acceptance") and end on the earlier of February 15, 1990, or the date of payment of the purchase price of such Unit by Railroad, or by its designee, or by a Trustee under the Financing (the "Closing"). Railroad shall purchase such accepted Units from Vendor or provide a purchaser therefor on or before February 15, 1990, and Vendor shall sell such Units to Railroad or such purchaser as Railroad may provide, at the total purchase prices as set in the Purchase Order as it relates to such Units, and the obligation of each so to do shall be absolute, regardless of the condition of such Units at the time of Closing. On Acceptance, Railroad will assume the responsibility and risk of loss with respect to such Unit and will deliver to Vendor a Certificate of Inspection and Acceptance substantially in the form attached hereto as Exhibit A (the "Certificate of Inspection and Acceptance"). On Acceptance, the Vendor's warranty as set forth in the Purchase Order will commence.

2. Title to the Units shall remain in Vendor until Closing and Railroad's right and interest therein is and shall be solely that of temporary possession, custody, and use under this Agreement. The Railroad or any third party acquiring an interest in the Units by reason of the Financing shall not by virtue of this Agreement or the temporary possession and use of the Units by the Railroad under or pursuant to this Agreement or of anything permitted to be done by the Railroad hereunder in respect of the Units, acquire any title to or ownership of the Units, or any portion thereof, and title to or ownership of the Units shall remain solely in the Vendor until Closing. Transfer of title to any Unit to the Railroad or to any purchaser provided by the Railroad shall be effected only at the Closing by delivery by the Vendor of a bill of sale to the Railroad or to such purchaser. When the purchase price of any Unit has been paid in full to Vendor and Vendor has delivered an appropriate bill of sale, this Agreement shall automatically be terminated with respect to such Unit without further action by or notice to any party concerned. Prior to delivery of any Unit, Railroad shall do such acts as may be required by law, or requested by Vendor, for the protection of Vendor's title to and interest in the Units, including, without limitation, recording at Railroad's expense a fully signed counterpart of this Agreement with the Interstate Commerce Commission, with the corresponding offices in Canada if any of the Units will be used in Canada and wherever else necessary to protect the Vendor's interest.

3. This Agreement is a financial arrangement, under which Railroad will have temporary possession, custody, and use of the Units to be purchased from Vendor, and the risk of loss of the Units after Acceptance is on the Railroad.

4. Any security deposits advanced to the Vendor by or on behalf of the Railroad to secure payment of the purchase price of the Units and the performance by Railroad hereunder and the proceeds of any insurance with respect to the Units may be retained and used by Vendor until payment of the purchase price is made, and such deposits or proceeds shall, at the election of the Vendor, either be applied toward payment of the purchase price or be returned to the Railroad at the time such payment is made.

5. Prior to delivery of any Units, Railroad will deposit or cause to be deposited with the Vendor pursuant to the Vendor's instructions, certificates of insurance coverage for the term of this Agreement providing for property damage and liability insurance (including contractual liability regarding the Railroad's obligations under this Agreement), and such other reasonable coverages as the Vendor may request, in such amounts, with such deductibles and with such other terms and conditions as the Vendor may request. Such insurance coverages shall be maintained throughout the term of this Agreement. All proceeds of such insurance shall be paid to the Vendor and shall be held by the Vendor as security securing the Railroad's performance hereunder and the ultimate payment of the purchase price upon transfer of title to the Units. Upon default by the Railroad in providing or maintaining such insurance, or upon default by Railroad in performing any other term of this Agreement or the Purchase Order, Vendor, without demand or notice, may, but shall not be obligated to, in its sole discretion terminate performance of this Agreement. Upon such termination, the Railroad shall, at no cost to the Vendor immediately assemble all of the Units, make them available to the Vendor at such place or places on Railroad's property or at Johnstown, Pennsylvania, as the Vendor may designate and protect, preserve and hold the Units pending receipt of further instruction from the Vendor.

6. It is the intent of the parties that the Vendor shall suffer absolutely no loss as a result of this Agreement and Railroad agrees that it will permit no liens of any kind to attach to the Units, and that it will (a) indemnify, defend, and save harmless Vendor from and against all claims, expenses, costs, or liabilities of whatsoever kind (except claims or liabilities based on or arising out of any breach of warranty or any defect in the Units for which Vendor is responsible under the Purchase Order), arising out of retention by Vendor of title to the Units or out of the temporary possession, use and operation thereof by Railroad during the period when title thereto remains in Vendor, or otherwise out of this Agreement (including without limitation consequential damages and lost profits under the Purchase Order) and (b) pay any and all taxes, (other than income taxes imposed on the vendor), fines, charges, and penalties that may accrue or be assessed or imposed upon the Units or the Vendor because of its ownership or because of the use, marking, operation, management or handling of the Units by

Railroad while title to such Units remains in Vendor pursuant to this Agreement.

7. Railroad will, at its own expense, keep and maintain the Units in good order and running condition and will, at its option, repair or replace or promptly pay to Vendor the purchase price in cash of those Units which may be damaged or destroyed by any cause during the term that this Agreement applies to such Units (in which event title to such Unit shall pass automatically to Railroad). Railroad shall not change the design, construction or specifications of any Unit, or any part thereof, without the prior written approval of the Vendor. Railroad shall maintain, use and operate the Units in compliance with all applicable laws, rules and regulations.

8. Prior to the delivery of any Unit to Railroad it will be numbered with its appropriate road number; in addition, there shall be plainly, distinctly, permanently, and conspicuously marked and maintained by the Railroad upon each side of each Unit in letters not less than one inch in height the following words:

LEASED FROM A CORPORATION AS FILED WITH THE ICC

No numbers shall be placed on the Units other than those specified in the first "Whereas" clause of this Agreement.

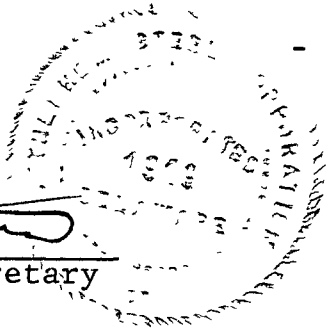
9. Vendor shall have the right to assign its rights under this Agreement pursuant to the Financing.

10. Subject to this Agreement and the rights of Vendor hereunder, and without releasing Railroad from any of its obligations hereunder, Railroad shall have the right to assign or transfer its rights hereunder, or in particular Units hereunder, pursuant to the Financing.

11. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Vendor and the Railroad have caused this instrument to be signed and acknowledged by their proper officers and their respective corporate seals to be hereunto affixed and duly attested, as of the day and year first above written.

ATTEST:


R. J. [Signature]
Assistant Secretary

BETHLEHEM STEEL CORPORATION

By *G. M. Welles*
Vice President


ATTEST

Susan Thorton
Assistant Secretary

WISCONSIN CENTRAL LTD.

By *Thomas T. Power Jr.*
Vice President

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF LEHIGH)

On this 21st day of December, 1989, before me personally appeared A. M. Weller, to me personally known, who, being by me duly sworn, says that he is a Vice President of BETHLEHEM STEEL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Ethel H. Vary
Notary Public

My commission expires: July 17, 1990

NOTARIAL SEAL
Ethel H. Vary, Notary Public
City of Bethlehem, Lehigh County, Pa.
My Commission Expires July 17, 1990

STATE OF ILLINOIS)
COUNTY OF COOK) ss:
~~CITY OF CHICAGO~~)

On this 22nd day of December, 1989, before me personally appeared Thomas F. Power, Jr., to me personally known, who, being by me duly sworn, says that he is ^{Vice} President of WISCONSIN CENTRAL LTD., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Catherine D. Aldana
Notary Public

My commission expires: 12/2/90

CERTIFICATE OF INSPECTION AND ACCEPTANCE

The undersigned, a duly authorized representative of Wisconsin Central Ltd. (the "Railroad"), for the purpose of inspecting equipment that is to become subject to a Temporary Use Agreement dated as of December 20, 1989, between the Railroad and Bethlehem Steel Corporation (the "Equipment Agreement"), and which may ultimately become subject to permanent financing arrangements of the Railroad, hereby certifies that the following described unit or units of railroad equipment (the "Equipment"):

Description: 3000 cu. ft. Covered Hopper Cars

Manufacturer: Bethlehem Steel Corporation

Quantity:

Road Numbers: WC _____

Delivered at: Johnstown, Pennsylvania

(i) are in good order and condition, (ii) have been completed in accordance with the requirements and provisions of the Purchase Order and (iii) have been delivered to and have been inspected and accepted on behalf of the Railroad pursuant to the Purchase Order as of the date indicated below.

The undersigned further certifies that there was plainly, distinctly, permanently and conspicuously marked in stencil on both sides of each unit of the Equipment the following legend, in letters not less than one inch in height:

LEASED FROM A CORPORATION AS FILED WITH THE ICC

Authorized Representative of
Wisconsin Central Ltd.

Dated: _____